IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SECOND DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

and
THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION NO : 17022 of 2004

Between:

Mr.Vanguru Sambasiva Rao, S/o.Mr.V.Purnachander Rao,
R/o.H.No.3-9-47/A/1, Raghavendra Apartments,
Sharada Nagar, Ramanthapur, Hyderabad.

..... PETITIONER

AND

1.The Union of India, rep.by its Secrtary Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi.
2.The State of A.P., rep.by its Secretary, Ministry of Women Development & Child Welfare Secretariat Buildings, Hyd.

(Respondents 1 &2 are ordered to be deleted by Court Order dated: 22.9.2004 in W.P. 17022 of 2004)
3. Mrs. Bavitha Vanguru, D/o.Late Mr.R.Krishna Murthy,
Present whereabouts unknown, previously stayed at 5/65, Mariri Road one Tree Hill, Auckland, NewZealand.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of Mandamus or any other appropriate writ or order or direction declaring that sec.12 (1) of the Guardians and Wards Act, 1890 empowers the courts to order for the temporary legal custody and protection of the minor person even in circumstances where the petitioner is having the physical custody of the minor person.

Counsel for the Petitioner: M/S.CLIENT & COUNSEL
Counsel for the Respondent: None appeared.

The Court made the following :

ORAL ORDER:

(per The Honourable Sri Devinder Gupta, the Chief Justice)

Respondents 1 and 2 have unnecessarily been joined as parties. Therefore, they are ordered to be deleted.

Petitioner questions the order passed on 15th September, 2004 by the Judge, Family Court, Hyderabad, dismissing I.A.S.R.9174 of 2004 filed in O.P. No. 652 of 2004.

On 14.7.2004, petitioner approached the Judge, Family Court, Hyderabad praying to declare him as the natural and legal guardian of girl child, Baby Anisha Vanguru, aged about 5 ½ years and pass appropriate orders in accordance with law. He also moved a separate miscellaneous application that during the pendency of the said petition, considering the urgency in the matter, interim orders be passed to declare and appoint him in having temporary custody of Baby Anisha Vanguru.

Petitioner and respondent are Hindus by religion and were married on 23.4.1995. Their marriage was duly registered with the Registrar of Marriages, Chikkadpally, Hyderabad. They were blessed with the son, Master V.Anoop, and, daughter, Baby Anisha Vanguru. In order to have better living, petitioner left to Newzealand with family, where the petitioner, his wife and two children stayed till 25.8.2001. Differences arose and respondent left petitioner/s company. The daughter continued to remain with the petitioner, and, son was taken away by the father of the respondent. Ultimately, custody of the son was also restored to the petitioner. Marriage between parties stood dissolved by the decree passed on 11.6.2002 by the Judge, Family Court, Hyderabad in O.P. No. 933 of 2001. The decree also recites that custody of the son and daughter is with the petitioner.

Section 6 of the Hindu Minority and Guardianship Act, 1956 makes it clear the natural guardians of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property. In the case of a minor boy or an unmarried girl, the father and after him, the mother, are the natural guardians. Thus, petitioner is the natural guardian of the minor child.

Petitioner is seeking declaration from the Competent Court of law by moving a petition to declare that he is the natural and legal guardian of girl child, Baby Anisha Vanguru. Family Courts established under the Family Courts Act, 1984 have jurisdiction to entertain and decide the suit or proceeding in relation to guardianship of the person or the custody of or access to any minor. Section 10 of the Family Courts Act, 1984 lays down the procedure for the Family Court, and, says that, subject to the other provisions of the Act and the rules, the provisions of the Code of Civil Procedure, 1908 and of any other law for the time being in force shall apply to the proceedings before a Family Court.

May be that petitioner had while invoking the jurisdiction of the Family Court mentioned the provisions of Section 12 of the Guardians and Wards Act, 1890, for obtaining interlocutory order during the pendency of the main petition, but, mere giving a wrong label to an application cannot prevent the Court for granting appropriate relief, in case, relief, otherwise, can be granted. Civil Court, or, Tribunal, has got inherent power to do substantial Justice to the parties. It is a case where there is already a decree of the Court between the parties dissolving the marriage. From the proceedings, copies of which have been placed on record, it stands, prima facie, established that physical custody of the girl child, Baby Anisha Vanguru, has been with the petitioner. Even the minor son is in the custody of the petitioner. Thus, in case, during the pendency of the main petition, prayer was made by the petitioner that interim orders be passed to declare him as having legal and physical custody of the girl child, Baby Anisha Vanguru, nothing prevented the Family Court to pass appropriate orders so as to enable the petitioner to continue retaining the minor girl child, and, also to apply to the concerned authorities for settling down in Australia, since it is a condition precedent to produce such a declaration from an appropriate Court. As such, Family Court was not justified in rejecting the application. Therefore, we allow the Writ Petition by setting aside the order of the Family Court, and, allow the application filed by the petitioner with direction to declare the petitioner as the natural and legal guardian of minor Baby Anisha Vanguru, having lawful custody of

Baby Anisha Vanguru. No costs.

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DEVINDER GUPTA, C.J.

22.9.2004

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C.V.RAMULU, J.

VR

NOTE

COPY OF THE ORDER BE FURNISHED

FORTHWITH.

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VR.

TO

1. Two CD copies.